

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Misuse of Internet Protocol (IP))	
Captioned Telephone Service)	CG Docket No. 13-24
)	
Structure and Practices of the Video Relay)	
Service Program; Telecommunications Relay)	
Services and Speech-to-Speech Services for)	
Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
)	
To: The Commission)	

**REPLY COMMENTS TO
FURTHER NOTICE OF PROPOSED RULEMAKING
ON IP CTS**

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BACKGROUND

The Arizona Commission for the Deaf and the Hard of Hearing (ACDHH) was established in 1977 to improve the quality of life for Deaf and Hard of Hearing residents. ACDHH serves as a statewide information referral center for issues related to people with hearing loss.

ACDHH aspires to be a national leader in communication access, support services and community empowerment throughout the state. Our mission is to ensure, in partnership with the public and private sectors, accessibility for the Deaf, Hard of Hearing, Deaf-Blind and persons with speech difficulties to improve their quality of life.

ACDHH provides valuable services to the citizens of Arizona including a statewide 24-hour telephone relay service, providing telephone equipment for qualified residents who are Deaf, Hard of Hearing, Speech Impaired, or Deaf-Blind, overseeing standards and licensing for sign language interpreters and providing outreach and educational opportunities in local communities.

Herein are ACDHH's reply comments to the FCC's Further Notice of Public Rule Making where the FCC consider transferring the "responsibilities for administering and overseeing IP CTS to state TRS programs," including "registering and certifying the eligibility of new IP CTS users."¹

There are a number of concerns that must first be addressed before the FCC further explores the possibility of migrating IP CTS oversight to states.

¹ Report and Order and Further Notice of Proposed Rulemaking In the Matter of Misuse of Internet Protocol (IP) Captioned Telephone Service, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, (FNPRM); CG Docket Nos. 13-24 & 03-123 (FCC 13-118), rel: August 26, 2013.

Jurisdictional Separation

As the Florida Public Service Commission² and the Kentucky Public Service Commission³ pointed out, the FCC needs to first resolve the jurisdictional separation issues in Docket No. WC 04-36 (IP-Enabled Services) before addressing the jurisdiction and funding of IP CTS. The FCC should not ignore the question of whether IP-enabled services are considered telecommunication services or information services. IP CTS is, obviously, an IP enabled service and thus is dependent on the question being addressed on Docket NO. WC 04-36. It would be irresponsible to address the jurisdictional issues in identifying interstate and intrastate calls for IP CTS without first resolving the jurisdictional separation issues.

Location of IP CTS calls

To make matter worse, it seems duplicitous for the FCC to propose an allocation of intrastate and interstate IP CTS calls when the FCC, in the very same document, admits difficulty in “ascertaining the location of calls made using IP transmissions” and acknowledges that it is an “assumption” that such locations can be ascertained.⁴

It is incumbent on the FCC’s part to ensure that there is a rigorous and foolproof mechanism to identify and verify the location of IP-enabled calls before the FCC even considers transferring IP CTS oversight to the states. This is especially true if the FCC expects the states to fund those so-called intrastate calls.

² Comments of the Florida Public Service Commission, CG Docket Nos. 13-24 & 03-123, September 27, 2013.

³ Comments of the Kentucky Public Service Commission, CG Docket Nos. 13-24 & 03-123, October 18, 2013.

⁴ FNPRM

Snowbird Effect

Without the ability to accurately separate intrastate calls from interstate calls, Arizona, perhaps more than most states, will bear the brunt of the FCC's effort to shift jurisdictional oversight of IP CTS. Arizona has a large population of residents who live in Arizona part of the year (primarily in the winter). Those individuals are typically called snowbirds. There is no current reliable studying identifying the specific number of snowbirds in Arizona.⁵ Regardless of the size, it is indisputable that snowbirds are typically older individuals and thus have most likely experienced hearing loss.

Those snowbirds are most likely individuals to utilize IP CTS. This is not only because of their hearing loss later in life but also because of their transitory lifestyle. IP CTS enables them to make calls wherever they move or live. Without the ability to pinpoint the precise internet location those calls are made from, it would be exceedingly unfair to expect Arizona or any other state to be required to pay for IP CTS. The FCC should not attempt to allocate IP CTS funding between intrastate and interstate, even on a presumptive basis, until technology has progressed to the point that each call's location of origin can be pinpointed.

Competition

⁵ Arizona State University economist, Dr. Steve Happel, estimated in 2003 that the snowbird population hover around 300,000 people. However, Michael Mackenzie, Executive Director of Canadian Snowbird Association, estimates 556,000 Canuck snowbirds made their way to Arizona in 2004. There are challenges in accurately counting this population because those snowbirds typically have bought property in Arizona even though they already own property elsewhere. Older studies of snowbirds have typically relied on the number of RVs and other more temporary housing environments (such as motels, apartments and joining other families with residences in state). Those methods severely undercount the true number of snowbirds. "For these and other reasons, estimates of the total snowbird population based upon the methodology used in the past are suspect," said Happel.

The migration of IP CTS oversight to states will most certainly end consumer choice in IP CTS providers. Only California has successfully produced a multi-vendoring environment for relay services and the challenges California faced (and continues to face) in managing this environment are well documented.⁶

Deaf and hard of hearing citizens of Arizona enjoys a near functional equivalence choice of providers when they rely on IP CTS for their access to telecommunications services. This is because of the current FCC regime that enables multiple providers to serve users across the country. Given legislative and regulatory challenges along with the scarcity of resources, ACDHH is unable to provide a commitment at this time that IP CTS users in Arizona will continue to have choice of multiple providers if IP CTS oversight was transferred to the states. The transfer of oversight would, thus, be considered a setback in the progress of civil rights for deaf and hard of hearing individuals.

Fair and Adequate Attention from Providers

Purple Communications rightfully points out that the migration of IP CTS will decentralize the program itself. This, by itself, exposes the program to potentially further waste, fraud and abuse as a result of a patchwork of state regulations and oversight. Perhaps even concerning is Purple's comments that IP CTS "would lack the resources to adequately serve each state independently, and providers instead would be incentivized to provide service only to more highly populated states where they could receive reasonable returns for their time. In less

⁶ See, for example, Comments of CSDVRS, Inc., LLC. CG Docket Nos. 10-51 & 03-123. August 19, 2013.

populated states, however, IP CTS service in its current form would likely languish or disappear altogether.”⁷

Purple’s concerning comments is perhaps supported by the trend we current see in TTY Relay as currently administered by the various states in terms of decreasing minutes and the lack of new or innovative TTY based technology or services. Given the health and positive developments in IP CTS in recent years, the FCC need to first ascertain that those developments will not be stunted when the FCC relinquishing its IP CTS oversight duties. It is essential that the FCC does not sentence IP CTS to the same fate that has befallen TTY Relay.

Consistent funding

Before the IP CTS oversight duties are transferred, the FCC must first ensure that the service is funded fairly and consistently throughout the various states and territories. Any gap in funding or quality will cause deaf and hard of hearing users of the service to seek ways to exploit gaps in regulations or enforcement by accessing IP CTS provided by another state. This will be especially acute in states that have a strong snowbird population such as Arizona. Given the various effectiveness levels and historical commitment to civil rights by the different state legislatures across the nation, it would be quite a while to ensure funding uniformity.

Length of Implementation

The FCC in its FNPRM asked, “how quickly would state programs be capable of taking on the responsibilities associated with managing IP CTS operations and funding IP CTS.”⁸ As

⁷ Purple Comments, CG Docket Nos. 13-24 & 03-123. November 4, 2013.

indicated in the California PUC comments,⁹ this could be a lengthy and complicated process requiring legislative authorization, budgetary allocation, oversight procurement and other transition related steps. All those does not even include the necessary outreach and education process, the signing up, registration of users along with the distribution of necessary IP CTS endpoints to access the service itself.

Given the rapid growth of IP CTS and its corresponding costs along with the fickle nature of legislatures across the country, this process could take years to implement. This would be more so without any financial incentive from the FCC as legislature would consider this an unfunded mandate.

Waste, Fraud and Abuse

The FCC continues to argue that waste, fraud and abuse continues to be an issue¹⁰ and that it has been a challenge for them to curb such practices. It is nevertheless ironic for the Commission to suggest that a patchwork of state enforcement and regulations will collectively be able to achieve what the Commission has admitted to be a challenge for themselves.

Such waste, fraud and abuse should be curbed and stabilized prior to any migration of IP CTS oversight to states. Failure to do so will only exacerbate the situation further.

⁸ FNPRM.

⁹ Comments of the California Public Utilities Commission and the People of the State of California, CG Docket Nos. 13-24 & 03-123. October 23, 2013.

¹⁰ FNPRM. For example, the FCC identifies incentives of referrals and possible usage of those without hearing loss.

Consumer organizations raise a critical argument by commenting that such migration “will create a hopelessly complex, confusing and often conflicting patchwork of IP CTS regulations. Many state programs are overly restrictive, chronically underfunded, under-staffed, and subject to the uncertainties of state appropriations processes.”¹¹ Whether such arguments are true or not is irrelevant. Perception is reality here and if the public lacks trust in the IP CTS system, such trust will have a detrimental effect on the actual access, quality and usage of services. The FCC needs to ensure the integrity of the system before they unburden themselves of the oversight of the IP CTS system.

Equipment

Equipment---how would it work? What if AZ adopts a new provider to provide access but that provider had not yet distributed hardware IP CTS equipment. Will the Commission compel the other providers of existing equipment in the state to continue to support these equipment or compel them to transfer access to those equipment to the new state contractor of those services?

Other issues

ACDHH’s silence on other relevant issues such as mandating IP CTS, registering and verifying users and defining eligibility should not be interpreted as indifference. ACDHH believes it premature to address those issues in the framework of migration IP CTS oversight. ACDHH has identified other more critical issues to address prior to further consideration of migrating

¹¹ Comments to Further Notice of Proposed Rulemaking; Hearing Loss Association of America, Telecommunications for the Deaf and Hard of Hearing, Deaf and Hard of hearing Consumer Advocacy Network, Cerebral Palsy and Deaf Organization, American Association of the Deaf-Blind, Mill Neck Services, Inc., National Association of the Deaf, and Association of Late-Deafened Adults, Inc., CG Docket Nos. 13-24 & 03-123. November 4, 2013.

oversight. Once those issues have been addressed, ACDHH believes it will then be more appropriate to address the remaining issues.

Respectfully submitted,

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